BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: MARK J. ALTCHEK, M.D., Physician's and Surgeon's Certificate No. G43919 Respondent.	Case No. 800-2015-012478 OAH No. 2018061236

DECISION AFTER NON-ADOPTION

Administrative Law Judge (ALJ) Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on January 16 and 17, 2018, in Oakland, California.

Deputy Attorney General Lawrence Mercer represented complainant Kimberly Kirchmeyer (Complainant), Executive Director of the Medical Board of California (Board).

Attorney Gary HM Thelander represented Respondent Mark J. Altchek, M.D., (Respondent) who was present for the hearing.

The record was held open for submission of written closing argument. Argument was timely received from complainant and from Respondent, and the matter was submitted for decision on February 20, 2018. On March 15, 2018, the ALJ issued a Proposed Decision.

On April 26, 2018, Panel A of the Board issued an Order of Non-Adoption of Proposed Decision. Oral argument on the matter was heard by the Panel on July 26, 2018, with ALJ Jill Schlichtmann presiding. Complainant was represented by Deputy Attorney General Lawrence Mercer. Respondent was present and was represented by Gary HM Thelander. Panel A, having read and considered the entire record, including the transcript and the exhibits, and having considered the written and oral arguments presented by the parties, hereby enters this decision after non-adoption.

FACTUAL FINDINGS

1. Respondent Mark J. Altchek, M.D., first received Physician's and Surgeon's Certificate No. G43919 on December 15, 1980. At the time of the hearing in this matter, this certificate was active, and was scheduled to expire on June 30, 2018.

2. In June 2010, the Board entered an order placing Respondent's certificate on probation for five years, and requiring him to take a prescribing practices course and a medical recordkeeping course. The Board took this action because Respondent had prescribed controlled substances to a patient without having performed an adequate physical examination. The Board terminated Respondent's probation early, in May 2014.

3. On July 19, 2017, acting in her official capacity as Executive Director of the Board, Complainant filed the accusation in this matter. Complainant alleges that Respondent has violated laws and regulations governing the practice of medicine by recommending marijuana to multiple patients without conducting proper examinations, without consulting with patients' other treatment providers, and without giving adequate information to patients regarding treatment alternatives. In addition, complainant alleges that Respondent failed to keep adequate patient care records. On these bases, complainant seeks revocation of Physician's and Surgeon's Certificate No. G43919.

4. Respondent timely requested a hearing.

Standard of Care for Marijuana Recommendations

5. At all times in question in this matter, California law generally permitted marijuana use only for medical purposes, upon recommendation by a physician.[1]

6. In May 2004, the Medical Board adopted a statement describing standards the Board intended to apply in evaluating physicians' recommendations to patients for medical marijuana use. The Board stated its intention to treat marijuana recommendations similarly to recommendations or prescriptions for any other medical treatment.

7. The Board described these standards as "accepted standards [that] are the same as any reasonable and prudent physician would follow when recommending or approving any other medication." The statement listed them:

1. History and an appropriate prior examination of the patient.
2. Development of a treatment plan with objectives.
3. Provision of informed consent including discussion of side effects.
4. Periodic review of the treatment's efficacy.
5. Consultation, as necessary.
6. Proper record keeping that supports the decision to recommend the use of medical marijuana.

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[1] California law now generally permits adults to use marijuana without a physician's recommendation.

8. The Board's statement also included several specific cautions to physicians. Two are especially relevant to this matter:

> 3. The physician should determine that medical marijuana use is not masking an acute or treatable progressive condition, or that such use will lead to a worsening of the patient's condition.
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> 5. A physician who is not the primary treating physician may still recommend medical marijuana for a patient's symptoms. However, it is incumbent on that physician to consult with the patient's primary treating physician or obtain the appropriate patient records to confirm the patient's underlying diagnosis and prior treatment history.

9. In an administrative decision the Board designated as precedential (Gov. Code, § 11425.60) (*In the Matter of the Accusation Against Tod H. Mikuriya, M.D.*, Board Decision No. MBC-2007-02-Q), the Board confirmed that "the standard of practice for recommending marijuana to a patient is the same as pertains to recommending any other treatment or medication." The elements of that standard are those stated above in Finding 7.

Respondent's Medical Practice

10. Since 2008, Respondent's medical practice has consisted solely of evaluating persons seeking recommendations for medical marijuana use. He estimates that he has given more than 60,000 such recommendations in his career.

11. When he made the recommendations at issue in this matter, Respondent worked in San Jose for a multi-location practice called MMJ Doctors. Respondent testified frankly that he believed most of his patients at MMJ Doctors were seeking medical marijuana recommendations despite having no objective medical reasons to use marijuana.

12. Respondent had no medical examination equipment in his office at MMJ Doctors. His regular practice was to perform no physical examination on any patient other than an "eyeball test," looking the patient over for obvious signs of physical or mental distress.

13. Respondent rarely if ever has received requests from his patients' other physicians for Respondent's records regarding these patients. Likewise, Respondent rarely if ever receives records from his patients' other physicians regarding those other physicians' care. Respondent explained that patients who came to MMJ Doctors for medical marijuana recommendations generally preferred to keep records of those recommendations separate from any other medical records, and that he respected this preference.

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14. Respondent recalls only one patient, a visibly pregnant woman, to whom he declined a medical marijuana recommendation. His general view is that everyone experiences insomnia, anxiety, unhappiness, or pain at times and that marijuana is far safer than alcohol as a treatment for these problems. Although he recommends marijuana to nearly everyone who seeks such a recommendation from him, he never tells patients that marijuana is the only or even necessarily the best treatment for their concerns.

TODD IRIYAMA

15. Todd Iriyama is a supervising investigator for the California Department of Consumer Affairs. Using an alias, Iriyama went to MMJ Doctors on March 3, 2015, and asked to see a physician about a marijuana recommendation.

16. Iriyama brought identification with his alias, but no medical records. While he waited to see a physician, he completed a questionnaire about his medical history and his reasons for seeking a marijuana recommendation.

17. Respondent spent no more than three minutes in an examination room with Iriyama. Neither Respondent nor any staff member performed any kind of physical examination of Iriyama. Iriyama had reported on his questionnaire that he experienced wrist and elbow pain; Respondent did not even ask Iriyama whether the pain was in his left arm, his right arm, or both. They discussed nothing about other medication Iriyama was using or had used; about possible risks of using marijuana to treat such pain; about treatment alternatives; or about symptom developments that might indicate to Iriyama that whatever illness or injury had produced his wrist and elbow pain was becoming more serious. They did not discuss whether or where Iriyama obtained primary medical care, and they did not discuss any diagnostic or follow-up plan for the pain Iriyama reported.

18. Respondent provided a written recommendation to Iriyama for medical marijuana. He also gave Iriyama a pre-printed document with references to books and videos regarding marijuana, and with a brief reference to Vitamin D supplementation. He advised Iriyama orally to take Vitamin D supplements and to avoid consuming "coffee, soda, energy drinks, and dairy."

19. Respondent's medical records regarding Iriyama's visit to MMJ Doctors were not in evidence.

"JULIE MARIE PARKER"

20. On July 21, 2015, an investigator who identified herself as Julie Marie Parker[2] came to MMJ Doctors and asked to see a physician about a marijuana recommendation.

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[2] No non-hearsay evidence established this person's true name.

21. Respondent's medical records regarding Parker's visit to MMJ Doctors were in evidence. She did not testify, but Respondent recalled meeting her.

22. The records include a questionnaire about Parker's medical history and reasons for seeking a marijuana recommendation. In handwriting that is not Respondent's handwriting, the questionnaire says, "PMS (per doctor)" as the medical problem prompting Parker's visit to MMJ Doctors. On his notes regarding his meeting with Parker, Respondent wrote "ANX," meaning anxiety, and "PMS," for premenstrual syndrome. The evidence did not establish whether Parker completed the questionnaire before or after meeting with Respondent, and did not establish whether Parker or Respondent suggested premenstrual distress as a reason for Respondent to recommend marijuana.

23. Under the heading "objective," Respondent wrote "WNL," indicating "within normal limits." He indicated no follow-up care plan.

24. Respondent provided a written recommendation to Parker for medical marijuana. He also advised Parker to consider magnesium supplementation as another treatment for premenstrual distress.

R.S.

25. Records were in evidence describing a visit by a patient, R.S.,[3] to Respondent's clinic on January 30, 2015. The patient did not testify. Respondent had no independent recall of his appointment with R.S., but testified regarding R.S.'s records.

26. The records include a questionnaire about the patient's medical history and reasons for seeking a marijuana recommendation. R.S. cited "insomnia . . . every day," "anxiety . . . getting better" "headaches . . . getting better" and pain in the "stomac" (sic) as reasons for coming to MMJ Doctors.

27. Respondent made brief notes regarding an in-person meeting with R.S. Under the heading "subjective," Respondent wrote "INS," "ANX," "peptic ulcer," and "foot." Respondent testified that INS referred to insomnia and ANX referred to anxiety. Under the heading "objective," Respondent wrote "WNL," indicating "within normal limits." He indicated no follow-up care plan.

28. Respondent provided a written recommendation to R.S. for medical marijuana.

29. Respondent testified that he did not believe he needed to ask R.S. questions about the report of insomnia, or that he needed to obtain a sleep study. Similarly, Respondent acknowledged that he did not do a full mental status examination on R.S., and that he did not discuss anxiety with R.S. in any detail.

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[3] Initials are used for this patient's privacy.

30. Respondent's notes do not indicate why he noted "peptic ulcer" as a possible explanation for R.S.'s stomach pain. He testified that he would have been likely to discuss this problem in greater depth than he had discussed insomnia or anxiety. Respondent did not say, however, that he would have referred R.S. to a primary care physician or to a gastroenterologist to seek potentially curative medical treatments for a peptic ulcer, and his records reflect no such referral. Rather, Respondent said that he would have recommended dietary modifications to R.S., such as refraining from consuming dairy products.

DAVID WOOLSEY

31. San Jose Police Sergeant David Woolsey visited MMJ Doctors on two occasions, to obtain medical marijuana recommendations for use in undercover law enforcement operations at marijuana retailers.[4]

32. To protect his undercover identity, Woolsey refused at the hearing to disclose the alias he had used when he visited MMJ Doctors. Because he refused to disclose this alias, Respondent was unable to review his written medical records regarding his evaluations of Woolsey. Likewise, those records were not in evidence.

33. Respondent had no independent recall of his meetings with Woolsey.

Expert Testimony

34. Akilesh Palanisamy, M.D., is a family physician in private practice. His training and experience qualify him to describe standards of care for physicians making recommendations for medical marijuana and other common treatments, and to review and evaluate medical records.

35. Dr. Palanisamy reviewed Respondent's records relating to Iriyama, Parker, and R.S.[5] He considered specifically whether the records demonstrated that Respondent's medical marijuana recommendations to these patients conformed to the standard of care stated in Findings 6 through 9, above.

TODD IRIYAMA

36. Dr. Palanisamy concluded that Respondent committed a simple departure from the relevant standard of medical care by recommending marijuana to Iriyama without having ascertained Iriyama's vital signs or performing any meaningful physical examination. In light of the matters stated in Findings 7, 17, and 18, this opinion is persuasive.

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[4] Another undercover police officer accompanied Woolsey on one occasion. This officer did not testify, and no records about him were in evidence.

[5] Dr. Palanisamy also reviewed information Woolsey provided regarding his and the other undercover officer's visits to MMJ Doctors. For the reasons stated below in Legal Conclusion 6, his review of this information was not relevant to resolution of this matter.

37. Dr. Palanisamy concluded that Respondent committed a simple departure from the relevant standard of medical care by recommending marijuana to Iriyama without having diagnosed, or obtaining confirmation that any other competent provider had diagnosed, a medical condition for which marijuana would be an appropriate treatment. In light of the matters stated in Findings 7, 17, and 18, this opinion is persuasive.

38. Dr. Palanisamy concluded that Respondent committed a simple departure from the relevant standard of medical care by recommending marijuana to Iriyama without having consulted any treatment records, or having sought any consultation with other physicians, regarding Iriyama's care. In light of the matters stated in Findings 7, 8, 16, 17, and 18, this opinion is persuasive.

39. Dr. Palanisamy concluded that Respondent committed a simple departure from the relevant standard of medical care by failing to discuss treatments other than marijuana that Iriyama had tried, or could try, for his pain. The recommendations described in Finding 18 are generalized, and are irrelevant to Iriyama's specific complaint. In light of this fact, and of the matters stated in Findings 7, 16, and 17, Dr. Palanisamy's opinion is persuasive.

"JULIE MARIE PARKER"

40. Dr. Palanisamy concluded that Respondent committed a simple departure from the relevant standard of medical care by recommending marijuana to Parker without having ascertained Parker's vital signs or performed any meaningful physical examination. In light of the matters stated in Findings 7, 23, and 24, this opinion is persuasive.

41. Dr. Palanisamy concluded that Respondent committed a simple departure from the relevant standard of medical care by recommending marijuana to Parker without having diagnosed, or confirmed that any other competent provider had diagnosed, a medical condition for which marijuana would be an appropriate treatment. In light of the matters stated in Findings 7, 22, 23, and 24, this opinion is persuasive.

42. Dr. Palanisamy concluded that Respondent committed a simple departure from the relevant standard of medical care by coaching Parker into suggesting complaints that might justify a medical marijuana recommendation. In light of the matters stated in Finding 22, this opinion is not persuasive.

43. Dr. Palanisamy concluded that Respondent committed a simple departure from the relevant standard of medical care by recommending marijuana to Parker without consulting any treatment records, or seeking any consultation with other physicians, regarding Parker's care. In light of the matters stated in Findings 7, 8, 22, 23, and 24 this opinion is persuasive.

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44. Dr. Palanisamy concluded that Respondent committed a simple departure from the relevant standard of medical care by failing to discuss treatments other than marijuana that Parker had tried, or could try, for her premenstrual distress. The recommendation described in Finding 24 is minimal. In light of this fact, and of the matters stated in Findings 7 and 22, Dr. Palanisamy's opinion is persuasive.

45. Dr. Palanisamy concluded that Respondent's records regarding Parker failed to document basic elements of a competent patient encounter, including without limitation a history, physical examination, treatment plan, informed consent, and appropriate consultations. The matters stated in Findings 22 and 23 make this opinion persuasive.

R.S.

46. Dr. Palanisamy concluded that Respondent committed a simple departure from the relevant standard of medical care by recommending marijuana to R.S. without having ascertained R.S.'s vital signs or performing any meaningful physical examination. In light of the matters stated in Findings 7 and 26 through 29, this opinion is persuasive.

47. Dr. Palanisamy concluded that Respondent committed a simple departure from the relevant standard of medical care by recommending marijuana to R.S. without consulting any treatment records, or seeking any consultation with other physicians, regarding R.S.'s care. In light of the matters stated in Findings 7, 8, 26, 27, 28, and 30 this opinion is persuasive.

48. Dr. Palanisamy concluded that Respondent committed a simple departure from the relevant standard of medical care by failing to discuss treatments other than marijuana that R.S. had tried, or could try. In light of this fact, and of the matters stated in Findings 7, 8, and 26 through 30, Dr. Palanisamy's opinion is persuasive.

49. Dr. Palanisamy concluded that Respondent's records regarding R.S. failed to document basic elements of a competent patient encounter, including without limitation a history, physical examination, treatment plan, informed consent, and appropriate consultations. The matters stated in Findings 26 and 27 make this opinion persuasive.

Other Evidence

50. Respondent confirmed that he took a two- or three-day medical recordkeeping course through the University of California, San Diego, Physician Assessment and Clinical Education (PACE) program. He remembers little about the course, aside from discussions of the SOAP (Subjective, Objective, Analysis, Plan) acronym for remembering components of an adequate medical record.

51. Respondent also took a prescribing practices course through PACE. He does not recall the curriculum; in particular, he recalls no discussion regarding drug-seeking behavior or substance abuse.

52. Respondent presented no other evidence explaining his medical decisions or describing plans for any future medical practice.

LEGAL CONCLUSIONS

1. Protection of the public "shall be the highest priority" for the Board and administrative law judges in exercising their disciplinary authority. (Bus. & Prof. Code, § 2229.) The Board "shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence." (Bus. & Prof. Code, § 2229, subd. (b).) "Where rehabilitation and protection are inconsistent, protection shall be paramount." (Bus. & Prof. Code, § 2229, subd. (c).)

2. The standard of proof which must be met to establish the charging allegations herein is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal--so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

3. Business and Professions Code section 2234 states that the Board shall take action against any licensee who is charged with unprofessional conduct. Unprofessional conduct includes (b) gross negligence; (c) repeated negligent acts (two or more negligent acts); (d) incompetence; and (e) the commission of any act involving dishonesty which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

Repeated Negligent Acts

4. "Repeated negligent acts" connotes two or more distinct departures from the minimum professionally accepted standard of care (Bus. & Prof. Code, § 2234, subd. (c))

5. The repeated negligent acts described in Findings 36 through 44 constitute cause for discipline against Respondent arising from his treatment of Iriyama and Parker.

6. The repeated negligent acts described in Findings 46 through 48 constitute cause for discipline against Respondent arising from his treatment of R.S.

7. The matters stated in Findings 31 through 33 establish that Respondent had an inadequate opportunity to address the allegations against him arising from his treatment of Woolsey and Woolsey's undercover colleague. For these reasons, Complainant did not establish cause for discipline against Respondent arising from his recommendations to these officers.

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Medical Records

8. Business and Professions Code section 2266 states that "[t]he failure of a physician and surgeon to maintain adequate and accurate records relating to the provisions of services to their patients constitutes unprofessional conduct."

9. The matters stated in Findings 45 and 49, but not the matter stated in Finding 42, constitute cause for discipline against Respondent arising from his medical recordkeeping.

Disciplinary Considerations

10. The matters stated in Findings 10 through 14 demonstrate that Respondent's actions with respect to Iriyama, Parker, and R.S. were normal for his medical practice, rather than aberrant.

11. The matters stated in Findings 2, 50, and 51 demonstrate that Respondent undertook refresher training in medical recordkeeping and prescribing practices in compliance with his prior order of probation which became effective June 7, 2010. The evidence demonstrates, however, that Respondent remembers little of what he learned in these courses.

12. As stated in Finding 14, Respondent views marijuana as a relatively harmless substance. As stated in Finding 5, although California law now reflects a similar view of marijuana, it did not when Respondent made the recommendations at issue in this matter. Respondent's willingness to ignore the plain standards stated in Findings 6 through 9, and instead to rubber-stamp tens of thousands of meaningless medical marijuana recommendations, expresses a disregard for standards of professional medical responsibility.

13. Given the multiple and independent causes for discipline as indicated in Legal Conclusions 5, 6, and 9, and Respondent's failure to present any evidence of rehabilitation or mitigation, as described in Findings 50 through 52, the Board has grounds to impose discipline, and must decide the level of discipline necessary to achieve its mandate of consumer protection.

14. The Board has concluded that the public can be adequately protected without imposing an outright revocation of Respondent's certificate. Instead, the Board will impose a five-year period of probation with terms and conditions designed to protect the public and rehabilitate Respondent. The Board has determined that Respondent shall successfully complete a clinical competence assessment program as a condition precedent before being permitted to practice medicine. Further, upon successfully completing a clinical competence assessment program, Respondent shall be required to participate in a

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professional enhancement program. Moreover, in addition to the standard terms and conditions of probation, Respondent shall be required to take a medical record keeping course, a prescribing course, and other education courses designed to cure the deficiencies in his practice.

ORDER

Physician's and Surgeon's Certificate No. G43919, first issued to Respondent Mark J. Altchek in December 1980, is revoked. However, the revocation is stayed and Respondent is placed on probation for five years, upon the following terms and conditions:

1. Clinical Competence Assessment Program – Condition Precedent

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program no later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of 3 and no more than 5 days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

Respondent shall not practice medicine until Respondent has successfully completed the program and has been so notified by the Board or its designee in writing.

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2. **Professional Enhancement Program**

Within 60 days after Respondent has successfully completed the clinical competence assessment program, Respondent shall participate in a professional enhancement program approved in advance by the Board or its designee, which shall include quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation, or until the Board or its designee determines that further participation is no longer necessary.

3. **Medical Record Keeping Course**

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

4. **Prescribing Practices Course**

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

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Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

5. Education Course

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

6. Notification

Within seven days of the effective date of this Decision, Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

7. Supervision of Physician Assistants and Advanced Practice Nurses

During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

8. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

9. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

10. General Probation Requirements

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

11. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

12. Non-Practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in

non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a Respondent residing outside of California, will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

13. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

14. License Surrender

Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall, within 15 calendar days, deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

15. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

16. Completion of Probation

Respondent shall comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

The Decision shall become effective at 5:00 p.m. on September 7, 2018.

IT IS SO ORDERED this 10th day of August, 2018.

Ronald H. Lewis, M.D., Chair
Panel A
Medical Board of California

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
	)	
MARK J. ALTCHEK, M.D.	)	
	)	Case No.: 800-2015-012478
Physician's & Surgeon's	)	
Certificate No: G 43919	)	OAH No.: 2017100887
	)	
Respondent	)	
	)	
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ORDER OF NON-ADOPTION OF PROPOSED DECISION

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted.** A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit directed at whether the level of discipline ordered is necessary to protect the public. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

To order a copy of the transcript, please contact Diamond Court Reporters, 1107 2nd Street, Suite 210, Sacramento, CA 95814. The telephone number is (916) 498-9288

To order a copy of the exhibits, please submit a written request to this Board.

In addition, oral argument will only be scheduled if a party files a request for oral argument with the Board within 20 days from the date of this notice. If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Oral argument shall be directed only to the question of whether the proposed penalty should be modified. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties' attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831
(916) 263-2349
Attention: Kristy Voong

Date: April 26, 2018

Ronald H. Lewis, M.D., Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: MARK J. ALTCHEK, M.D., Physician's and Surgeon's Certificate No. G43919 Respondent.	Case No. 800-2015-012478 OAH No. 2017100887

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on January 16 and 17, 2018, in Oakland, California.

Deputy Attorney General Lawrence Mercer represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California (Board).

Attorney Gary HM Thelander represented respondent Mark J. Altchek, M.D., who was present for the hearing.

The record was held open for submission of written closing argument. Argument was timely received from complainant and from respondent, and the matter was submitted for decision on February 20, 2018.

FACTUAL FINDINGS

1. Respondent Mark J. Altchek, M.D., first received Physician's and Surgeon's Certificate No. G43919 on December 15, 1980. At the time of the hearing in this matter, this certificate was active, and was scheduled to expire on June 30, 2018.

2. In June 2010, the Board entered an order placing respondent's certificate on probation for five years, and requiring him to take a prescribing practices course and a medical recordkeeping course. The Board took this action because respondent had prescribed controlled substances to a patient without having performed an adequate physical examination. The Board terminated respondent's probation early, in May 2014.

3. On July 19, 2017, acting in her official capacity as Executive Director of the Board, complainant Kimberly Kirchmeyer filed the accusation in this matter. Complainant alleges that respondent has violated laws and regulations governing the practice of medicine by recommending marijuana to multiple patients without conducting proper examinations, without consulting with patients' other treatment providers, and without giving adequate information to patients regarding treatment alternatives. In addition, complainant alleges that respondent failed to keep adequate patient care records. On these bases, complainant seeks revocation of Physician's and Surgeon's Certificate No. G43919.

4. Respondent timely requested a hearing.

Standard of Care for Marijuana Recommendations

5. At all times in question in this matter, California law generally permitted marijuana use only for medical purposes, upon recommendation by a physician.[1]

6. In May 2004, the Medical Board adopted a statement describing standards the Board intended to apply in evaluating physicians' recommendations to patients for medical marijuana use. The Board stated its intention to treat marijuana recommendations similarly to recommendations or prescriptions for any other medical treatment.

7. The Board described these standards as "accepted standards [that] are the same as any reasonable and prudent physician would follow when recommending or approving any other medication." The statement listed them:

> 1. History and an appropriate prior examination of the patient.
> 2. Development of a treatment plan with objectives.
> 3. Provision of informed consent including discussion of side effects.
> 4. Periodic review of the treatment's efficacy.
> 5. Consultation, as necessary.
> 6. Proper record keeping that supports the decision to recommend the use of medical marijuana.

8. The Board's statement also included several specific cautions to physicians. Two are especially relevant to this matter:

> 3. The physician should determine that medical marijuana use is not masking an acute or treatable progressive condition, or that such use will lead to a worsening of the patient's condition.

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[1] California law now generally permits adults to use marijuana without a physician's recommendation.

5. A physician who is not the primary treating physician may still recommend medical marijuana for a patient's symptoms. However, it is incumbent on that physician to consult with the patient's primary treating physician or obtain the appropriate patient records to confirm the patient's underlying diagnosis and prior treatment history.

9. In an administrative decision the Board designated as precedential (Gov. Code, § 11425.60) (*In the Matter of the Accusation Against Tod H. Mikuriya, M.D.*, Board Decision No. MBC-2007-02-Q), the Board confirmed that "the standard of practice for recommending marijuana to a patient is the same as pertains to recommending any other treatment or medication." The elements of that standard are those stated above in Finding 7.

Respondent's Medical Practice

10. Since 2008, respondent's medical practice has consisted solely of evaluating persons seeking recommendations for medical marijuana use. He estimates that he has given more than 60,000 such recommendations in his career.

11. When he made the recommendations at issue in this matter, respondent worked in San Jose for a multi-location practice called MMJ Doctors. Respondent testified frankly that he believed most of his patients at MMJ Doctors to be seeking medical marijuana recommendations despite having no objective medical reasons to use marijuana.

12. Respondent had no medical examination equipment in his office at MMJ Doctors. His regular practice was to perform no physical examination on any patient other than an "eyeball test," looking the patient over for obvious signs of physical or mental distress.

13. Respondent rarely if ever has received requests from his patients' other physicians for respondent's records regarding these patients. Likewise, respondent rarely if ever receives records from his patients' other physicians regarding those other physicians' care. Respondent explained that patients who came to MMJ Doctors for medical marijuana recommendations generally preferred to keep records of those recommendations separate from any other medical records, and that he respected this preference.

14. Respondent recalls only one patient, a visibly pregnant woman, to whom he declined a medical marijuana recommendation. His general view is that everyone experiences insomnia, anxiety, unhappiness, or pain at times and that marijuana is far safer than alcohol as a treatment for these problems. Although he recommends marijuana to nearly everyone who seeks such a recommendation from him, he never tells patients that marijuana is the only or even necessarily the best treatment for their concerns.

TODD IRIYAMA

15. Todd Iriyama is a supervising investigator for the California Department of Consumer Affairs. Using an alias, Iriyama went to MMJ Doctors on March 3, 2015, and asked to see a physician about a marijuana recommendation.

16. Iriyama brought identification with his alias, but no medical records. While he waited to see a physician, he completed a questionnaire about his medical history and his reasons for seeking a marijuana recommendation.

17. Respondent spent no more than three minutes in an examination room with Iriyama. Neither respondent nor any staff member performed any kind of physical examination of Iriyama. Iriyama had reported on his questionnaire that he experienced wrist and elbow pain; respondent did not even ask Iriyama whether the pain was in his left arm, his right arm, or both. They discussed nothing about other medication Iriyama was using or had used; about possible risks of using marijuana to treat such pain; about treatment alternatives; or about symptom developments that might indicate to Iriyama that whatever illness or injury had produced his wrist and elbow pain was becoming more serious. They did not discuss whether or where Iriyama obtained primary medical care, and they did not discuss any diagnostic or follow-up plan for the pain Iriyama reported.

18. Respondent provided a written recommendation to Iriyama for medical marijuana. He also gave Iriyama a pre-printed document with references to books and videos regarding marijuana, and with a brief reference to Vitamin D supplementation. He advised Iriyama orally to take Vitamin D supplements and to avoid consuming "coffee, soda, energy drinks, and dairy."

19. Respondent's medical records regarding Iriyama's visit to MMJ Doctors were not in evidence.

"JULIE MARIE PARKER"

20. On July 21, 2015, an investigator who identified herself as Julie Marie Parker[2] came to MMJ Doctors and asked to see a physician about a marijuana recommendation.

21. Respondent's medical records regarding Parker's visit to MMJ Doctors were in evidence. She did not testify, but respondent recalled meeting her.

22. The records include a questionnaire about Parker's medical history and reasons for seeking a marijuana recommendation. In handwriting that is not respondent's handwriting, the questionnaire says, "PMS (per doctor)" as the medical problem prompting Parker's visit to MMJ Doctors. On his notes regarding his meeting with Parker, respondent wrote "ANX," meaning anxiety, and "PMS," for premenstrual syndrome. The evidence did

[2] No non-hearsay evidence established this person's true name.

not establish whether Parker completed the questionnaire before or after meeting with respondent, and did not establish whether Parker or respondent suggested premenstrual distress as a reason for respondent to recommend marijuana.

23. Under the heading "objective," respondent wrote "WNL," indicating "within normal limits." He indicated no follow-up care plan.

24. Respondent provided a written recommendation to Parker for medical marijuana. He also advised Parker to consider magnesium supplementation as another treatment for premenstrual distress.

R.S.

25. Records were in evidence describing a visit by a patient, R.S.,[3] to respondent's clinic on January 30, 2015. The patient did not testify. Respondent had no independent recall of his appointment with R.S., but testified regarding R.S.'s records.

26. The records include a questionnaire about the patient's medical history and reasons for seeking a marijuana recommendation. R.S. cited "insomnia . . . every day," "anxiety . . . getting better" "headaches . . . getting better" and pain in the "stomac" as reasons for coming to MMJ Doctors.

27. Respondent made brief notes regarding an in-person meeting with R.S. Under the heading "subjective," respondent wrote "INS," "ANX," "peptic ulcer," and "foot." Respondent testified that INS referred to insomnia and ANX referred to anxiety. Under the heading "objective," respondent wrote "WNL," indicating "within normal limits." He indicated no follow-up care plan.

28. Respondent provided a written recommendation to R.S. for medical marijuana.

29. Respondent testified that he did not believe he needed to ask R.S. questions about the report of insomnia, or that he needed to obtain a sleep study. Similarly, respondent acknowledged that he did not do a full mental status examination on R.S., and that he did not discuss anxiety with R.S. in any detail.

30. Respondent's notes do not indicate why he noted "peptic ulcer" as a possible explanation for R.S.'s stomach pain. He testified that he would have been likely to discuss this problem in greater depth than he had discussed insomnia or anxiety. Respondent did not say, however, that he would have referred R.S. to a primary care physician or to a gastroenterologist to seek potentially curative medical treatments for a peptic ulcer, and his records reflect no such referral. Rather, respondent said that he would have recommended dietary modifications to R.S., such as refraining from consuming dairy products.

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[3] Initials are used for this patient's privacy.

DAVID WOOLSEY

31. San Jose Police Sergeant David Woolsey visited MMJ Doctors on two occasions, to obtain medical marijuana recommendations for use in undercover law enforcement operations at marijuana retailers.[4]

32. To protect his undercover identity, Woolsey refused at the hearing to disclose the alias he had used when he visited MMJ Doctors. Because he refused to disclose this alias, respondent was unable to review his written medical records regarding his evaluations of Woolsey. Likewise, those records were not in evidence.

33. Respondent had no independent recall of his meetings with Woolsey.

Expert Testimony

34. Akilesh Palanisamy, M.D., is a family physician in private practice. His training and experience qualify him to describe standards of care for physicians making recommendations for medical marijuana and other common treatments, and to review and evaluate medical records.

35. Dr. Palanisamy reviewed respondent's records relating to Iriyama, Parker, and R.S.[5] He considered specifically whether the records demonstrated that respondent's medical marijuana recommendations to these patients conformed to the standard of care stated in Findings 6 through 9, above.

TODD IRIYAMA

36. Dr. Palanisamy concluded that respondent committed a simple departure from the relevant standard of medical care by recommending marijuana to Iriyama without having ascertained Iriyama's vital signs or performed any meaningful physical examination. In light of the matters stated in Findings 7, 17, and 18, this opinion is persuasive.

37. Dr. Palanisamy concluded that respondent committed a simple departure from the relevant standard of medical care by recommending marijuana to Iriyama without having diagnosed, or obtained confirmation that any other competent provider had diagnosed, a medical condition for which marijuana would be an appropriate treatment. In light of the matters stated in Findings 7, 17, and 18, this opinion is persuasive.

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[4] Another undercover police officer accompanied Woolsey on one occasion. This officer did not testify, and no records about him were in evidence.

[5] Dr. Palanisamy also reviewed information Woolsey provided regarding his and the other undercover officer's visits to MMJ Doctors. For the reasons stated below in Legal Conclusion 6, his review of this information was not relevant to resolution of this matter.

38. Dr. Palanisamy concluded that respondent committed a simple departure from the relevant standard of medical care by recommending marijuana to Iriyama without having consulted any treatment records, or having sought any consultation with other physicians, regarding Iriyama's care. In light of the matters stated in Findings 7, 8, 16, 17, and 18, this opinion is persuasive.

39. Dr. Palanisamy concluded that respondent committed a simple departure from the relevant standard of medical care by failing to discuss treatments other than marijuana that Iriyama had tried, or could try, for his pain. The recommendations described in Finding 18 are generalized, and are irrelevant to Iriyama's specific complaint. In light of this fact, and of the matters stated in Findings 7, 16, and 17, Dr. Palanisamy's opinion is persuasive.

"JULIE MARIE PARKER"

40. Dr. Palanisamy concluded that respondent committed a simple departure from the relevant standard of medical care by recommending marijuana to Parker without having ascertained Parker's vital signs or performed any meaningful physical examination. In light of the matters stated in Findings 7, 23, and 24, this opinion is persuasive.

41. Dr. Palanisamy concluded that respondent committed a simple departure from the relevant standard of medical care by recommending marijuana to Parker without having diagnosed, or confirmed that any other competent provider had diagnosed, a medical condition for which marijuana would be an appropriate treatment. In light of the matters stated in Findings 7, 22, 23, and 24, this opinion is persuasive.

42. Dr. Palanisamy concluded that respondent committed a simple departure from the relevant standard of medical care by coaching Parker into suggesting complaints that might justify a medical marijuana recommendation. In light of the matters stated in Finding 22, this opinion is not persuasive.

43. Dr. Palanisamy concluded that respondent committed a simple departure from the relevant standard of medical care by recommending marijuana to Parker without consulting any treatment records, or seeking any consultation with other physicians, regarding Parker's care. In light of the matters stated in Findings 7, 8, 22, 23, and 24 this opinion is persuasive.

44. Dr. Palanisamy concluded that respondent committed a simple departure from the relevant standard of medical care by failing to discuss treatments other than marijuana that Parker had tried, or could try, for her premenstrual distress. The recommendation described in Finding 24 is minimal. In light of this fact, and of the matters stated in Findings 7 and 22, Dr. Palanisamy's opinion is persuasive.

45. Dr. Palanisamy concluded that respondent's records regarding Parker failed to document basic elements of a competent patient encounter, including without limitation a

history, physical examination, treatment plan, informed consent, and appropriate consultations. The matters stated in Findings 22 and 23 make this opinion persuasive.

R.S.

46. Dr. Palanisamy concluded that respondent committed a simple departure from the relevant standard of medical care by recommending marijuana to R.S. without having ascertained R.S.'s vital signs or performed any meaningful physical examination. In light of the matters stated in Findings 7 and 26 through 29, this opinion is persuasive.

47. Dr. Palanisamy concluded that respondent committed a simple departure from the relevant standard of medical care by recommending marijuana to R.S. without consulting any treatment records, or seeking any consultation with other physicians, regarding R.S.'s care. In light of the matters stated in Findings 7, 8, 26, 27, 28, and 30 this opinion is persuasive.

48. Dr. Palanisamy concluded that respondent committed a simple departure from the relevant standard of medical care by failing to discuss treatments other than marijuana that R.S. had tried, or could try. In light of this fact, and of the matters stated in Findings 7, 8, and 26 through 30, Dr. Palanisamy's opinion is persuasive.

49. Dr. Palanisamy concluded that respondent's records regarding R.S. failed to document basic elements of a competent patient encounter, including without limitation a history, physical examination, treatment plan, informed consent, and appropriate consultations. The matters stated in Findings 26 and 27 make this opinion persuasive.

Other Evidence

50. Respondent confirmed that he took a two- or three-day medical recordkeeping course through the University of California, San Diego, Physician Assessment and Clinical Education (PACE) program. He remembers little about the course, aside from discussions of the SOAP (Subjective, Objective, Analysis, Plan) acronym for remembering components of an adequate medical record.

51. Respondent also took a prescribing practices course through PACE. He does not recall the curriculum; in particular, he recalls no discussion regarding drug-seeking behavior or substance abuse.

52. Respondent presented no other evidence explaining his medical decisions or describing plans for any future medical practice.

LEGAL CONCLUSIONS

1. The Board may suspend or revoke respondent's physician's and surgeon's certificate if clear and convincing evidence establishes the facts supporting discipline. The factual findings above reflect this standard.

2. Business and Professions Code section 2234 makes a physician's unprofessional conduct grounds for suspension or revocation of the physician's certificate.

3. Unprofessional conduct includes:

a. Repeated negligent acts, connoting multiple distinct departures from the minimum professionally accepted standard of care (Bus. & Prof. Code, § 2234, subd. (c)); and

b. Failing to maintain adequate and accurate patient records (*id.*, § 2266).

Repeated Negligent Acts

4. The repeated negligent acts described in Findings 46 through 48 constitute cause for discipline against respondent arising from his treatment of R.S.

5. The repeated negligent acts described in Findings 36 through 44 constitute cause for discipline against respondent arising from his treatment of Iriyama and Parker.

6. The matters stated in Findings 31 through 33 establish that respondent had an inadequate opportunity to address the allegations against him arising from his treatment of Woolsey and Woolsey's undercover colleague. For these reasons, complainant did not establish cause for discipline against respondent arising from his recommendations to these officers.

Medical Records

7. The matters stated in Findings 45 and 49, but not the matter stated in Finding 42, constitute cause for discipline against respondent arising from his medical recordkeeping.

Disciplinary Considerations

8. The matters stated in Findings 10 through 14 demonstrate that respondent's actions with respect to Iriyama, Parker, and R.S. were normal, rather than aberrant, for his medical practice.

9. The matters stated in Findings 2, 50, and 51 demonstrate that respondent has relatively recently undertaken refresher training in medical recordkeeping and prescribing practices. Taken together, however, the evidence overall in this matter established that nothing respondent might have learned in these courses has affected his medical judgment.

10. As stated in Finding 14, respondent views marijuana as a relatively harmless substance. As stated in Finding 5, however, although California law now reflects a similar view of marijuana, it did not when respondent made the recommendations at issue in this matter. Respondent's willingness to ignore the plain standards stated in Findings 6 through 9, and instead to rubber-stamp tens of thousands of meaningless medical marijuana recommendations, expresses a fundamental disregard for standards of professional medical responsibility. Particularly given respondent's failure, as described in Findings 50 through 52, to present any evidence of rehabilitation or mitigation, revocation of respondent's certificate is appropriate in this matter.

ORDER

1. Physician's and Surgeon's Certificate No. G43919, first issued to respondent Mark J. Altchek in December 1980, is revoked.

2. Any authority held by respondent Mark J. Altchek to supervise physician assistants and advanced practice nurses is revoked.

DATED: March 15, 2018

DocuSigned by:
Juliet E. Cox
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JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings

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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **Mark J. Altchek, M.D.** 306 Ralston Street San Francisco, CA 94132 Physician's and Surgeon's Certificate No. G43919, Respondent.	Case No. 800-2015-012478 **ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California.

2. On or about December 15, 1980, the Medical Board issued Physician's and Surgeon's Certificate Number G43919 to Mark J. Altchek, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2018, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

5. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

". . . (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care."

6. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

(Patient R.S.)

7. Respondent Mark J. Altchek, M.D. is subject to disciplinary action under sections 2234 and/or 2234(c) in that Respondent recommended marijuana to Patient R.S.[1] without an appropriate examination or medical indication. The circumstances are as follows:

8. On or about January 30, 2015, Patient R.S. a 35-year-old male with a history significant for schizophrenia, consulted with Respondent to determine if R.S. qualified for a recommendation or approval for R.S. to use marijuana for medical purposes.

9. In a patient questionnaire, Patient R.S. reported a "long" history of insomnia, anxiety and headaches. R.S. stated that he was a member at Kaiser Permanente, Santa Clara, but no prior medical records were reviewed or requested by Respondent. No vital signs were taken or recorded. Although the patient concealed his diagnosis of schizophrenia and denied that he had received any prior treatment for his presenting complaints, Respondent did not try to obtain a history of the patient's insomnia, anxiety or headaches, nor did he document whether the patient had tried and failed with medical alternatives to marijuana or understood the risks versus benefits

[1] Patient names are abbreviated to protect privacy.

of marijuana. Respondent's record indicates that the patient was "not asked" if marijuana helped his conditions. Respondent did not perform a physical examination or consult with Patient R.S.' primary care physician. Although the treatment plan was purported to be to increase sleep, decrease anxiety and reduce stress, no follow up care or periodic review of the treatment was planned. Despite the lack of findings to support its use, Patient R.S. was given a recommendation to use marijuana for one year before returning.

10. Respondent is guilty of unprofessional conduct and Respondent's certificate is subject to discipline pursuant to Sections 2234 and/or 2234(c) of the Code based on his negligent care and treatment of Patient R.S., including but not limited to the following:

A. Respondent failed to obtain vital signs or a complete history and failed to perform an appropriate physical examination before recommending treatment with marijuana;

B. Respondent failed to review the patient's medical records or to consult with his primary care physician before recommending treatment with marijuana;

C. Respondent failed to consider and/or discuss alternative therapies or to document informed consent before issuing a recommendation for treatment with marijuana.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

(Undercover Officers)

11. Respondent Mark J. Altchek, M.D. is subject to disciplinary action under sections 2234 and/or 2234(c) in that Respondent recommended marijuana to various undercover officers without an appropriate examination or medical indication. The circumstances are as follows:

12. On March 3, 2015, an investigator for the Health Quality Investigation Unit made an undercover visit to Respondent using a pseudonym of T.T.[2] During a visit which lasted approximately two and one-half minutes, Respondent did not obtain a medical history of the officer's chief complaint of "chronic pain" and did not review or request any medical records. No vital signs were obtained and no physical examination was performed. Respondent gave the

[2] Officers' undercover names will be provided to Respondent in discovery.

officer a one-page handout on cannabinoids and reference works on cannabis as medicine and a cure for cancer. The patient was given a one-year recommendation for the medical use of marijuana with no plan for follow up in the interim.

13. On July 21, 2015, an investigator for the Health Quality Investigation Unit made an undercover visit to Respondent using a pseudonym of J.P. At the outset of her face-to-face meeting with Respondent, he signed a recommendation for J.P.'s medical use of marijuana -- albeit at that point in time the officer had not yet completed the patient questionnaire nor yet written down a complaint for which she planned to use marijuana. None of the elements of a bona fide medical visit, such as vital signs, history, physical examination and diagnosis, were performed by Respondent. Instead, Respondent advised J.P. that he needed to write down a medical reason for marijuana use and pointed out that J.P. had not provided one. Respondent asked the officer if she had ever suffered from "PMS" and when the officer said she had, Respondent wrote "PMS" in the record and told the officer that he would also note anxiety as a complaint for her. The physician-patient encounter lasted approximately three minutes.

14. On November 24, 2016, the Board received a report of an undercover visit performed by two officers of the San Jose Police Department. The officers filled out the patient questionnaire, listing fictitious complaints. The receptionist suggested the two officers be seen together by Respondent to "save time." In their meeting with Respondent, no history was obtained and no physical examination was performed. Respondent advised that *Sativa Indica*, a variety of marijuana, was better for insomnia and sleep. After approximately 5-7 minutes with Respondent, the officers were given recommendations for the medical use of marijuana.

15. Respondent is guilty of unprofessional conduct and Respondent's certificate is subject to discipline pursuant to Sections 2234 and/or 2234(c) of the Code based upon his negligent recommendations for the use of marijuana by various undercover officers, including but not limited to the following:

A. Respondent failed to record vital signs or perform a physical examination before recommending treatment with marijuana;

B. Respondent recommended marijuana in the absence of a medical indication;

C. Respondent failed to review the patient's medical records or to consult with his primary care physician before recommending treatment with marijuana;

D. Respondent failed to consider and/or discuss alternative therapies or to document findings that would support a recommendation for treatment with marijuana.

THIRD CAUSE FOR DISCIPLINE

(Failure to Keep Adequate Records)

16. Respondent Mark J. Altchek, M.D. is subject to disciplinary action under sections 2234 and/or 2266, in that Respondent failed to keep adequate and accurate medical records. The circumstances are as follows:

17. Complainant incorporates the allegations set forth in the First and Second causes for discipline as though fully set out herein.

18. Respondent is guilty of unprofessional conduct and Respondent's certificate is subject to discipline pursuant to Sections 2234 and/or 2234(c) and/or 2266 of the Code based upon his record keeping which was deficient in the following respects:

A. Respondent failed to document the basic elements of a patient encounter, including but not limited to a history, physical examination, treatment plan, informed consent and appropriate consultations;

B. Respondent coached J.P. regarding documentation of conditions justifying a recommendation for medical use of marijuana and included a condition not mentioned by her.

DISCIPLINARY CONSIDERATIONS

19. To determine the degree of discipline, if any, to be imposed on Respondent Mark J. Altchek, M.D., Complainant alleges that on or about June 7, 2010, in a prior disciplinary action entitled "In the Matter of the Accusation Against Mark J. Altchek, M.D." before the Medical Board of California, in Case Number 12-2007-181538, Respondent's license was revoked, with the order of revocation stayed, and Respondent's license was placed on probation for five years with terms and conditions which included prescribing practices and medical records keeping courses. That decision is now final and is incorporated by reference as if fully set forth herein.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G43919, issued to Mark J. Altchek, M.D.;

2. Revoking, suspending or denying approval of Mark J. Altchek, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Mark J. Altchek, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: July 19, 2017

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California
Complainant

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